Interview summary

On Thursday, November 12, 2008, the Examiner and Applicants' representative met for an interview to discuss this application. Topics of discussion included the pending claims in the case and U.S. Patent Application Publication No. US 2003/0130883 (Schroeder et al.). The Applicants would like to thank the Examiner for his hospitality during the interview.

REMARKS

In the Office Action of August 5, 2008, Claims 1-24 were rejected in a first office action on the merits. In the Office Action, the Examiner took the following action:[1]

a. rejected claims 1-4, 6-8, 12-16, 18-20, and 24 under 35 U.S.C. 102(a) as being anticipated by Schroeder et al. (US 2003/0130883 Al, "*Schroeder*");

b. rejected claims 5 and 17 under 35 U.S.C. 103(a) as being unpatentable over *Schroeder* in view of Lee et al. (US 5712985 A, "*Lee*"); and

c. rejected claims 9-11 and 21-23 under 35 U.S.C. 103(a) as being unpatentable over *Schroeder* in view of Cox et al. (US 20020143604 Al, "*Cox*").

Claims 1 and 13 are amended.[2] Claims 2-3, 5-6, 8, 12, 14-15, 17-18, 20, and 24 are cancelled. Claims 1, 4, 7, 9-11, 13, 16, 19, and 21-23 remain pending.

(a) *Schroeder* is not prior art under 35 U.S.C. 102(a)

35 U.S.C. 102(a) provides that "[a] person shall be entitled to a patent unless ... the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent." Thus, to anticipate any claims under section 102(a), *Schroeder* must have been published before the invention of the claimed invention by Applicants.

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[1] The Office Action contains a number of statements reflecting characterizations of the related art and claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

[2] Claims were amended solely to expedite prosecution. Applicants preserve the right to pursue the original subject matter in subsequent applications.

However, *Schroeder* was published too late to qualify as 102(a) prior art. Although *Schroeder* was published on July 10, 2003, and although the filing date of the present application is January 29, 2004, the effective filing date of the present application based on U.S. Provisional Application 60/443,923 is January 30, 2003. In addition, Applicants properly perfected the benefit of priority of the provisional application.

According to 37 C.F.R. 1.78(a)(5)(i), a nonprovisional application claiming the benefit of a prior-filed provisional application must contain a reference to the prior-filed provisional application, identifying it by the provisional application number. Furthermore, 37 C.F.R. 1.78(a)(5)(iii) provides that Applicants can include this information in an application data sheet. *See also* 37 C.F.R. 1.76(b)(5). Finally, 37 C.F.R. 1.78(a)(5)(ii) places a time limit on the disclosure of the provisional reference, but this time limit is not an issue if the disclosure is made concurrently with the nonprovisional application.

In accordance with these Regulations, Applicants filed an application data sheet with their nonprovisional application. On page 2 of the application data sheet, Applicants included the appropriate reference to provisional application 60/443,923 which was filed on January 30, 2003.

(b) Rejection of claims 1-4, 6-8, 12-16, 18-20, and 24 under 35 U.S.C. 102(a)

Claims 1-4, 6-8, 12-16, 18-20, and 24 have been rejected under 35 U.S.C. 102(a) as being anticipated by *Schroeder*. Claims 2-3, 8, 12, 14-15, 20, and 24 have been cancelled. Claims 1, 4, 7, 13, 16, and 19 remain pending. Since Schroeder is not prior art under 35 U.S.C. 102(a), the rejection should be withdrawn.

However, Applicants anticipate that the Examiner will similarly assert the *Schroeder* reference as 102(e) art instead. During the November 12, 2008 interview, the Examiner suggested that Applicants could advance prosecution of this case by more closely tying claimed display elements to the other elements of the claim. Applicants have amended the claims in accordance with the Examiner's recommendations. Thus, based on the foregoing amendments and the arguments set forth during the November 12, 2008 Interview, Applicants respectfully traverse this (expected) rejection.

In order to anticipate amended independent claims 1 and 13, the *Schroeder* reference must disclose each and every element of those claims. *See* M.P.E.P. 2131. But, as Applicants argue below, *Schroeder* does not anticipate claims 1 and 13 because it fails to disclose several elements of those claims, as amended.

Amended claim 1 now includes combinations of elements not disclosed in the prior art, including "executing a what-if scenario by enabling a user to make a change in planned spending on the at least one marketing element and using econometric modeling to quantify the effect of the change in planned spending on consumer demand and shipments; modifying the at least one marketing plan based on the results of the what-if scenario to generate a modified marketing plan; executing the modified marketing plan and capturing actual consumer demand and shipment data; displaying both (i) the forecasted consumer demand, the actual consumer demand, and a first percent error between the forecasted consumer demand and the actual consumer demand; and (ii) the forecasted shipments, the actual shipments, and a second percent error between the forecasted shipments and the actual shipments."

Schroeder does disclose "a tool to run multiple 'what if' scenarios to show the financial returns to retailers. *See Schroeder* at ¶ 112. The method disclosed in *Schroeder* can also "predict[] the profit attributable to a proposed sales promotion of a product." *See Schroeder* at ¶ 6. Whether or not *Schroeder* discloses the use of "econometric modeling" as claimed here, *Schroeder* still falls short. For example, Schroeder also does not disclose "displaying both (i) the forecasted consumer demand, the captured actual consumer demand, and a first percent error between the forecasted consumer demand and the actual consumer demand; and (ii) the forecasted shipments, the captured actual shipments, and a second percent error between the forecasted shipments and the actual shipments." To reject (now-cancelled) dependent claims 3 and 15, which also recited a determination of error, the Examiner cited paragraph 42 of Schroeder. The Examiner cited this paragraph to show that "the system allows the user to minimize the risk of the prediction to achieve an acceptable level of error." But paragraph 42 only comments on the attractiveness of vector regression as a regression technique. This discussion of error is entirely unrelated to computing error *after* forecasts have been made, where actual data has been collected and the differences between the forecasts and the actual data are computed. Furthermore, neither paragraph 42 nor any other part of Schroeder discloses displaying error in the manner claimed here.

Because *Schroeder* does not disclose each and every element of amended independent claim 1, *Schroeder* does not anticipate claim 1 under 35 U.S.C. § 102(e). Therefore, claim 1 should be allowable over *Schroeder*. Although it differs in scope from claim 1, claim 13 contains similar recitations to those discussed above with respect

to amended claim 1. Thus, for the same reasons as presented above for claim 1, the rejection of claim 13 should be withdrawn.

The Examiner rejected claims 4, 7, 16, and 19 based on *Schroeder* as well. Since these are all dependent claims that incorporate the individual claim elements discussed above, these dependent claims all recite claim elements not disclosed in *Schroeder*. Accordingly, these dependent claims are not anticipated, and the (expected) rejection of claims 4, 7, 16, and 19 under 35 U.S.C. 102(e) should be withdrawn at least for the reasons given above with respect to claims 1, 9, and 17.

(c) Rejection of claims 5 and 17 under 35 U.S.C. 103

Claims 5 and 17 have been cancelled.

(d) Rejection of claims 9-11 and 21-23 under 35 U.S.C. 103

Claims 9-11 and 21-23 have been rejected under 35 U.S.C. 103 as being unpatentable over *Schroeder* in view of *Cox*. Since *Schroeder* is not prior art under 35 U.S.C. 102(a), and since the Office Action relies on *Schroeder* as a 102(a) reference, the combination of references under 35 U.S.C. 103 is inappropriate. Therefore, the rejection should be withdrawn.

However, Applicants anticipate that the Examiner will similarly assert the *Schroeder* reference as 102(e) art instead, and respectfully traverses the rejection.

"[T]he framework for objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 U.S.P.Q 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art." M.P.E.P. § 2141(II). "The key to supporting any rejection under 35 U.SC. 103

is the clear articulation of the reason(s) why the claimed invention would have been obvious." M.P.E.P. § 2141(III). "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2141(III). In the Office Action, "there must be "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." M.P.E.P. § 2141(III).

Here, for claims 9-11 and 21-23, the differences between the claimed invention and the prior art have not been properly ascertained because the prior art lacks several elements discussed above. As a result, no rational underpinning to support the legal conclusion of obviousness has been provided. Accordingly, no reason has been clearly articulated as to why the prior art would have rendered the claimed invention obvious to one of ordinary skill in the art. Thus, the (expected) rejection of claims 9-11 and 21-23 under 35 U.S.C. 103 should be withdrawn.

In view of the foregoing remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: December 5, 2008

By: _____

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